



The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

December 18, 2018
SPR18/2060

Lucas S. Larson
MuckRock News
411A Highland Ave.
Somerville, MA 02144-2516

Dear Lucas S. Larson:

I have received your letter appealing the response of the Massachusetts Port Authority to your request for records.

I have directed a member of my staff, Attorney Stephen Shorey, to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Murray".

Rebecca S. Murray
Supervisor of Records

cc: Ashley K. Carvalho, Esq.

Rastellini, Patricia (SEC)

From: Rastellini, Patricia (SEC)
Sent: Wednesday, December 19, 2018 2:06 PM
To: '61821-25203887@requests.muckrock.com'
Cc: pre@sec.state.ma.us
Subject: RE: Massachusetts Public Records Law Request #SPR18/1644

Good afternoon,

When your December 10, 2018 email was received it was initially viewed as being sent to MassPort as opposed to this office. Your email of December 18, 2018 demonstrates you are requesting an appeal.

My apologies for the confusion!

Regards,

Patricia Rastellini, Office Manager

From: 61821-25203887@requests.muckrock.com [mailto:61821-25203887@requests.muckrock.com]
Sent: Tuesday, December 18, 2018 7:01 PM
To: Puccini, Angela (SEC)
Cc: SEC-DL-PREWEB; Kaba, Khalil (SEC)
Subject: RE: Massachusetts Public Records Law Request #SPR18/1644

Massachusetts Port Authority
PRL Office
Suite 200S
1 Harborside Drive
Boston, MA 02128

December 18, 2018

This is a follow up to request number SPR18/1644:

Just writing to confirm that my previous email was received. Please let me know what the status of my appeal is.

Thanks so much!

Lucas

Filed via MuckRock.com
E-mail (Preferred): 61821-25203887@requests.muckrock.com
Upload documents directly: https://www.muckrock.com/accounts/agency_login/massport-480/boston-logan-disaster-and-resiliency-plan-61821/?email=angela.m.puccini%40state.ma.us&uuid-login=ae1a9f87-0717-4c82-9d8a-fb59062612e3#agency-reply
Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock News
DEPT MR 61821
411A Highland Ave
Somerville, MA 02144-2516

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On Dec. 10, 2018:

Angela,

Thanks for getting back to me. This email will serve as my appeal of MassPort's second denial (12/7/18) of my public requests request, originally submitted on September 28, 2018. I am attaching my initial appeal letter submitted to your office, your office's determination of a successful appeal, and MassPort's second denial letter.

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I request that the Supervisor of Records move to compel the agency to release the records I have requested.

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On Dec. 10, 2018:

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requested. MassPort sent me a letter on December 7th (attached), but failed to comply with your office's finding that the records should be released. Please advise me on how I can proceed with the agency.

Thanks,

Lucas Smolcic Larson

On Dec. 7, 2018:

Mr. Larson,

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Ashley K. Carvalho

Legal Counsel

Massachusetts Port Authority

One Harborside Drive, Suite 200S

East Boston, MA 02128

acarvalho@massport.com<mailto:acarvalho@massport.com>

[cid:image001.png@01D48E0E.355B28C0]

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On Dec. 6, 2018:

Mr. Larson,

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Most sincerely,

Angela M. Puccini, Esq.

Staff Attorney

Office of the Secretary of the Commonwealth

Public Records Division

One Ashburton Place, Room 1719

Boston, MA 02108

(617) 727-2832 (office)

(617) 727-5914 (fax)

<http://www.sec.state.ma.us/pre/preidx.htm>

A Guide to Public Records Law: <https://www.sec.state.ma.us/pre/prepdf/guide.pdf>
Review appeal determinations online: <http://www.sec.state.ma.us/appealsweb/appealsstatus.aspx>

On Sept. 28, 2018:

To Whom It May Concern:

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1. A copy of the Disaster and Infrastructure Resiliency Plan (DRIP) for Boston Logan Airport prepared by the consultant group Kleinfelder and submitted to Massport, described on Kleinfelder's website (<https://www.kleinfelder.com/index.cfm/resource-library/project-briefs/massport-disaster-and-infrastructure-resiliency-plan-pdf/>) and in this report by Airport Improvement (<https://airportimprovement.com/article/logan-intl-heeds-warnings-prepares-potential-flooding>). This report was submitted to Massport in October of 2015 and addresses the threat of flooding at Boston Logan Airport.
2. A copy of the Sustainability Management Plan for Boston Logan Airport prepared by the consultant group Vanasse Hangen Brustlin and submitted to Massport in 2015, described in the Airport Improvement article above. It is designed to assist the airport as it makes facility, airfield, and roadway upgrades in the coming years.

I also request that, if appropriate, fees be waived as we believe this request is in the public interest, as suggested but not stipulated by the recommendations of the Massachusetts Supervisor of Public Records. The requested documents will be made available to the general public free of charge as part of the public information service at MuckRock.com, processed by a representative of the news media/press and is made in the process of news gathering and not for commercial usage.

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Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 10 business days, as the statute requires.

Sincerely,

Lucas Smolcic Larson

Filed via MuckRock.com

E-mail (Preferred): 61821-25203887@requests.muckrock.com

Upload documents directly: https://www.muckrock.com/accounts/agency_login/massport-480/boston-logan-disaster-and-resiliency-plan-61821/?email=angela.m.puccini%40state.ma.us&uuid-login=ae1a9f87-0717-4c82-9d8a-fb59062612e3#agency-reply

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Cc: SEC-DL-PREWEB; Kaba, Khalil (SEC)
Subject: RE: Massachusetts Public Records Law Request #SPR18/1644
Attachments: spr181644.pdf; MuckRock_appeal_response_12-7-18_qOuszYS.pdf; Reason20for20Appeal_hL6Q5No.pdf

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Legal Counsel
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On Nov. 21, 2018:
Hello,

Please be aware, the Supervisor of Records has issued a determination relating to an appeal in which you were involved. This determination is attached, and available online at:
<http://www.sec.state.ma.us/AppealsWeb/AppealsStatus.aspx>.

If you have any questions, please contact the Public Records Division at 617-727-2832 or pre@sec.state.ma.us.

Best,
Khalil Kaba
Office of the Secretary of the Commonwealth
Public Records Division
One Ashburton Place, Room 1719
Boston, MA 02108
617-727-2832

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Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston, MA 02128-2909
Telephone (617) 568-5000
www.massport.com

December 7, 2017

VIA EMAIL AND FIRST CLASS MAIL

Lucas Smolcic Larson
MuckRock News
DEPT MR 61821
411 A Highland Ave
Somerville, MA 02144
61821-70966920@requests.muckrock.com

Re: Public Records Request

Dear Mr. Larson:

This letter is regarding your recent public records request to the Massachusetts Port Authority (the "Authority" or "Massport"), in which you requested a copy of Massport's Disaster and Infrastructure Resiliency Plan (DRIP), for all of Massport's facilities, including Logan Airport.

The Authority responded on October 12, 2018 denying your request for a copy of the DRIP pursuant to M.G.L. c. 4 §7(26)(a) and (n) as the report is a threat and vulnerability assessment evaluating structural elements, security measures, and emergency preparedness directly related to the safety or security of persons, buildings, structures, facilities and aviation transportation. You appealed the Authority's decision and the Supervisor of Records ("Supervisor") responded on November 21, 2018. In its letter, the Supervisor wrote that it was "unclear how the Authority may utilize 49 C.F.R. 1520...[and] which sections of the cited regulations th Authority is claiming permit withholding the requested record in its entirety." Additionally, the Supervisor wrote that "it is unclear how the entirety of the report reflects policies and procedures" and that "the Authority's response does not explain how the report would be 'useful [to terrorist] to maximize damage".

Sensitive Security Information ("SSI") is "information obtained or developed in the conduct of security activities....the disclosure of which TSA has determined would be detrimental to the security of transportation." 49 CFR §1520.5(a). Federal law prohibits the Authority from disclosing this information.

The DRIP is an analysis of Authority-owned transportation critical infrastructures that are necessary to safely and securely manage and operate the Airport. The DRIP lists and assesses the actual, potential or threatened vulnerabilities to these critical infrastructures. Pursuant to 49 CFR §§ 1520.5(a)(1), 1520.5(5), and 1520.5(12)(ii) the DRIP, if released would: (1) be detrimental to the security of aviation transportation; (2) is a vulnerability assessment of vital infrastructures of aviation transportation; and (3) identifies systems and assets vital to aviation transportation that the incapacity or

Operating

Boston Logan International Airport • Port of Boston general cargo and passenger terminals • Hanscom Field • Boston Fish Pier • Commonwealth Pier (site of the World Trade Center Boston) • Worcester Regional Airport

RECYCLED PAPER

destruction would have a debilitating impact on transportation security. Therefore, the DRIP is considered Sensitive Security Information in its entirety and its disclosure would create a threat to public health and safety. Furthermore, the release of the vulnerability assessment could be used by terrorists to maximize damage by targeting the specific aviation critical infrastructures in a manner consistent with the vulnerabilities reported. A terrorist could also use the information in the DRIP following a catastrophe and/or national disaster to attack the identified infrastructures and incapacitate aviation transportation.

Consistent with the Authority's previous response to your request, it is denying your request for a copy of the DRIP pursuant to M.G.L. c. 4 §§7(26)(a) and (n).

Sincerely,

A handwritten signature in black ink, appearing to read "Ashley Carvalho", with a long horizontal flourish extending to the right.

Ashley K. Carvalho
Legal Counsel

November 5th, 2018

Supervisor of Records
Office of the Secretary of the Commonwealth of Massachusetts

This letter details my reason for appealing the Massachusetts Port Authority's denial of access to public records, provided to me in a letter sent on October 12, 2018 (attached). The letter was in response to a Massachusetts Public Records Law request I submitted on September 28, 2018 (also attached).

In denying my request for a copy of the Disaster and Infrastructure Resiliency Plan (henceforth 'DRIP') for Boston Logan Airport, the Mass. Port Authority cited two exemptions to the disclosure of documents under the Massachusetts Public Records Law. The first, pursuant to Mass. Gen. Laws Ch. 457(26)(a) states that records that are "specifically or by necessary implication" exempt "from disclosure by statute" may be withheld. The Authority then cited 49 CFR §§ 15 and 1520 (Protection of Sensitive Security Information (SSI) and SSI disclosed by the TSA or the Coast Guard), claiming that these statutes state that "no part of a record containing SSI may be disclosed to a person without an operational 'need to know.'" However, 49 CFR §§ 1520.15(b) and 49 CFR §§ 15.15(b) state that documents containing SSI and non-SSI may be released with the SSI redacted. On these grounds, I want to appeal the Mass. Port Authority's decision to deny release of the entire record in question when it could be released with SSI redacted.

The Port Authority also cited Mass. Gen. Laws Ch 457(26)(n), which exempts records relating to the structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or other records relating to the security or safety of transportation infrastructure. I contend that the record in question, the DRIP prepared by the consultant group Kleinfelder, contains sections that do not address these topics and, therefore, should be released subject to redaction under exemption (n). For example, Kleinfelder's own promotional materials around the report reference the information in the document includes "the latest in climate change research" (<https://www.kleinfelder.com/index.cfm/resource-library/project-briefs/massport-disaster-and-infrastructure-resiliency-plan-pdf/>). The application of exemption (n) is subject to review by the Supervisor of Records, and I urge a reversal of the Port Authority's decision to withhold the entire document in question.

Sincerely,

Lucas Smolcic Larson

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